Supreme Court, U.S.
FILED
981919 JUN 1 - 1998
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No.

IN THE

Supreme Court of the United States

CITY OF NEWARK; NEWARK POLICE DEPARTMENT; JOSEPH J. SANTIAGO, NEWARK POLICE DIRECTOR; THOMAS C. O'REILLY, NEWARK POLICE CHIEF OF POLICE,

Petitioners,

v.

FRATERNAL ORDER OF POLICE NEWARK LODGE NO. 12; FARUQ ABDUL-AZIZ; SHAKOOR MUSTAFA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the City of Newark Police Department violates the Free Exercise Clause of the First Amendment of the United States Constitution by applying a grooming policy to its police officers to ensure their safety, establish discipline and create espirt de corps?

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Petitioners City of Newark; Newark Police Department; Joseph J. Santiago, Newark Police Director; Thomas C. O'Reilly, Newark Chief of Police (hereinafter "City of Newark" or "Petitioners") respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit (hereinafter "Third Circuit"), which affirms the United States District Court judgment that the City of Newark Chief of Police Special Order No. 71-15 (hereinafter "Order 71-15") violates the First Amendment of the United States Constitution. The City of Newark denies the neutral application of Order 71-15 violates the First Amendment, since it advances its compelling interest in the effective functioning of its Police Department. The judgment of the Third Circuit creates a myriad of religious exceptions to the orderly administration of the Newark Police Department.

OPINIONS BELOW

On July 29, 1997, the Honorable John W. Bissell, Judge of the United States District Court for the District of New Jersey, granted a permanent injunction based upon his finding of a violation of 42 U.S.C.A. § 1983, the First Amendment and the Fourteenth Amendments of the United States Constitution. The opinion is reproduced herein as Appendix "C". The August 26, 1997 Order permanently enjoining the City of Newark from enforcing its grooming policy is reproduced herein as Appendix "D". On October 6, 1997, Judge Bissell awarded counsel fees with taxable costs against the Petitioners in this matter. The March 3, 1999 judgment and opinion of the United States Court of Appeals for the Third Circuit affirming the decision of Judge Bissell and awarding taxable costs to appellees is reproduced herein as Appendix "A & B".

STATEMENT OF JURISDICTION

The jurisdiction of this Court to review the March 3, 1999 judgment of the United States Court of Appeal for the Third Circuit is invoked under Title 28 of the United States Code, Section 1254(1). This Petition for Certiorari is timely filed on Tuesday, June 1, 1999, which is the ninetieth day after the March 3, 1999 judgment and opinion of the United States Court of Appeal for the Third Circuit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment to the United States Constitution, Section 1, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty. Or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of its laws.

42 U.S.C. § 1983. Civil action for deprivation or rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A. Factual Background

The City of Newark is a municipality in the New Jersey Civil Service Employer Act. It is subject to various state regulations generally, and specific regulations when it attempts to discipline its employees. The City of Newark must issue a Preliminary Notice of Disciplinary Action with

the attached specification. If the employee requests a hearing, it is granted. Pursuant to state regulations and the collective bargaining agreement, Police Officers are represented by attorneys and by union representatives at their hearings.

On March 23, 1971, Anthony Barres, Chief of Police for the City of Newark, issued Special Order from the Chief of Police No. 71-15, which sets the standards of appearance for hair style and facial hair growths worn by Police Officers. Special Order 71-15 is otherwise known as the grooming policy.

On November 21, 1995, Jack McEntee, President of the Newark FOP and the FOP filed a verified complaint with the Department of Law & Public Safety, Division of Civil Rights, alleging discrimination on the basis of race and disability. Specifically, the complaint alleges police officers with the medical conditions prohibiting them from shaving, were transferred to positions which were less favorable and prohibited from working other assignments. On or about March 11, 1996, the matter was transmitted to the Equal Employment Opportunity Commission for an investigation into the allegations against the City of Newark.

On July 25, 1996, Shakoor Mustafa was served with a Preliminary Notice of Disciplinary Action for failing to conform to the Special Order from the Chief of Police No. 71-15.

On January 13, 1997, Joseph Santiago, Police Director of the Newark Police Department, caused a Preliminary Notice of Disciplinary Action to be issued against Police Officer Faruq Abdul-Aziz for failing to conform to the Department's grooming policy.

On January 24, 1997, Thomas C. O'Reilly issued Memorandum from the Chief of Police Memo No. 97-30, which advised all bureau commanders to submit a list of those police personnel who were not in compliance with the grooming standards set by the department. On February 4, 1997, Jack McEntee, President of the Newark FOP and the FOP filed an amended verified complaint with the Department of Law & Public Safety, Division of Civil Rights, with the approval of Rolando Torres, Jr., Director of the Division on Civil Rights amending paragraphs 3 and 4.

As a result of court actions and postponements, the disciplinary actions involving Aziz and Mustafa were scheduled for a hearing on May 22, 1997. On May 21, 1997, plaintiffs filed a verified complaint in United States District Court seeking a temporary injunction prohibiting the City of Newark from conducting a disciplinary hearing the next day. On July 29, 1997, Judge Bissell granted a permanent injunction based upon a violation of 42 U.S.C.A. § 1983 and the First Amendment of the United States Constitution. On October 6, 1997, Judge Bissell awarded counsel fees with taxable costs to plaintiff. The plaintiff's have not been forced to shave pursuant to the government's grooming.

The City of Newark arrives at this Court to request that the permanent injunction in this case be vacated and allow it to effectively manage its police department without regard to the religion of its members.

B. The City Of Newark's Arguments And Their Treatment Below

At every level of review in this matter the City of Newark has argued that Order 71-15 is a rule of general

applicability and does not discriminate against the respondents in this matter. As a result, this matter is controlled by *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990), *rehearing denied*, 496 U.S. 913, 110 S. Ct. 2605, 110 L. Ed. 2d 285, *on remand*, 799 P.2d 148, 310 Or. 376 (1990), and the applicable test is the rational relationship test for regulations that are generally applicable and do not discriminate on the basis of religion.

The City of Newark relies upon *Marshall v. District of Columbia*, 559 F.2d 726 (D.C. Cir. 1977), which determined a grooming regulation was not arbitrary and capricious and did not violate a police officer's religion. *Id.* at 727. The City of Newark argues that its grooming policy is rationally connected to the effective functioning of the [Police] department. The City of Newark argued in the United States District Court and the Third Circuit that *Kelly v. Johnson*, 425 U.S. 238, 96 S. Ct. 1440, 47 L. Ed. 2d 708 (1976), stands for the proposition that a grooming policy in the police department does not violate a police officer's rights under the First and Fourteenth Amendments.

The City of Newark argued that courts should give great deference to the judgment of the Newark Police Director pursuant to *Goldman v. Weinberger*, 475 U.S. 503, 106 S. Ct. 1310, 1313, 89 L. Ed. 2d 478 (1986); *Blanken v. Ohio Department of Rehabilitation and Corrections*, 944 F. Supp. 1359, 1366 (S.D. Oh. 1996); *Bell v. Wolfish*, 441 U.S. 520, 547, 99 S. Ct. 1861, 1878, 60 L. Ed. 2d 447 (1974); *Procunier v. Martinez*, 416 U.S. 396, 405, 94 S. Ct. 1800, 1807, 40 L. Ed. 2d 224 (1974); *Lawson v. Singletary*, 85 F.3d 502, 512 (11th Cir. 1996). Newark argued its grooming policy advanced its compelling interest in the effective

functioning of its police department by making police officers recognizable to the public, establishing discipline and fostering Esprit de corps. The grooming policy is intended to present a professional and dignified image to the public, thereby creating trust and respect from the public and co-workers. When officers fail to meet the standards set by the Newark Police Department, it is quickly perceived as rebellion and divisive. The City of Newark believes that the Newark Police Director is uniquely qualified to determine how to manage its police department, so it alcoves its compelling interest of providing police protection within its borders.

The City of Newark argued there is no right to absolute freedom of religious exercise in the United States of America. There must be a balancing of compelling government interests and the individual's religious exercise or practise. Certainly an incidental burden on an individual's religious belief is not a violation of the First Amendment of the United States Constitution.

The City of Newark also argued that police officers are members of a highly regulated industry and have a lower expectation to freely act as they wish. Case law involving police officers and public safety employees clearly establishes this point. "Both the federal courts and our New Jersey courts have found that persons who engage in industries 'subject to close supervision and inspection' " have a diminished expectation of privacy. *In re Martin*, 90 N.J. 295, 310-16 (1982) (allowing New Jersey Division of Gaming Enforcement to conduct suspicionless searches of casino Licensees); *United States v. Biswell*, 406 U.S. 311, 92 S. Ct. 1593, 32 L. Ed. 2d 87 (1972) (upholding suspicionless search of gun dealer's locked storeroom);

Colonnade Catering Corp. v. United States, 397 U.S. 72, 90 S. Ct. 774, 25 L. Ed. 2d 60 (1970) (permitting suspicionless searches of premises of liquor licensees); *New Jersey Dep't of Envtl. Protection v. Duran*, 251 N.J. Super. 55, 62-63 (App. Div. 1991) (fishing industry); *Shoemaker v. Handel*, 795 F.2d 1136, 1141-43 (3rd Cir.), *cert. denied*, 479 U.S. 986, 107 S. Ct. 577, 93 L. Ed. 580 (1986) (upholding random breathalyzer and urine testing of licensed jockeys and other track personnel); *Policemen's Benevolent Ass'n of New Jersey, Local 318 v. Township of Washington*, 850 F.2d 133, 136-141 (3rd Cir. 1988) (police officers are members of highly regulated industry and are on notice their behavior must conform to various standards.)

REASONS FOR GRANTING THE WRIT

I.

THE MARCH 3, 1999 OPINION CONFLICTS WITH THE JUDGMENT OF THE THIRD CIRCUIT IN *PRISCILLA M. LIPPINCOTT ADAMS v. COMMISSIONER OF INTERNAL REVENUE SERVICE*, WHICH WAS DECIDED ON MARCH 4, 1999.

Remarkably, on March 4, 1999, one day after the case subjudice, the Third Circuit in *Priscilla M. Lippincott Adams v. Commissioner of the Internal Revenue Service*, Docket Nos. 98-7200 issued a ruling in direct contradiction to this matter. In this case, Priscilla Adams was a devout Quacker who worked as a "Peace Field Secretary" for the Philadelphia Yearly Meeting of the Religious Society of Friends. In exercising her religious beliefs, Adams felt the payment of her taxes, which could potentially fund the

military was against the will of God. As a result, she did not pay taxes from 1985 to 1989. The Commissioner of the Internal Revenue Service did not permit a religious exemption to the payment of taxes, despite numerous statutory exemptions, and assessed deficiencies and penalties for the years 1988, 1989, 1992, 1993, and 1994. The penalties and deficiencies were upheld in the Tax Court and the appeal was filed with the United States Court of Appeals for the Third Circuit.

The rule of this case is that ". . . neutral, generally applicable laws may impinge on religious practices, even in the absence of a compelling state interest." *See Smith* at 494 U.S. 882-884; *Boerne v. City of Flores*, 117 S. Ct. 2157, 2161 (1997); *Adams* at page 4. In *Adams*, the Third Circuit found that the interest of maintaining a sound tax system was so compelling that when it was balanced against the religious belief, the government's interest prevailed. Certainly the City of Newark makes the same argument that the efficient operation of its police department is such a compelling interest it outweighs the religious beliefs in its case. The *Adams'* court determined it would curtail the effectiveness of the Internal Revenue Service to consider the plethora of religious exceptions, which would flow from the wide variety of religious beliefs. The City of Newark Police Department will suffer from these consequences given the Third Circuit ruling in our case. The City of Newark must now accommodate any request for a religious exemption to any of its policies whenever a police officer has a religious belief the officer deems is in conflict with our rules and regulations. The City of Newark would be forced to become an expert in every religion and guess whether its policies will be interpreted as compelling by

the courts, or spend excessive amounts of public funds in costs and lawyer's fees frivolously if it is wrong.

The opinion in *Adams* cites *New Colonial Ice Co. v. Helviering*, 292 U.S. 435 (1934) *Adams* at 14, for the proposition that the courts are not encouraged to create exceptions to the statutory scheme. The *Adams* court stated tax exemptions are a matter of legislative grace. The City of Newark contends its executive authority to create and administrate its policies are equally as important as the legislative rules and regulations and deserve the same deference by the courts to its determinations. Essentially, the United States District Court and the United States Court of Appeals for the Third Circuit have substituted their judgment for that of the Joseph J. Santiago, Police Director, who has over twenty years of experience as a police officer, superior officer and police director combined. The City of Newark is now penalized by the courts, because the United States District Court and Third Circuit Court Judges do not understand the realities of running a large urban police department, particularly one that was involved in a major scandal when Director Santiago accepted the position of police director.

Crain v. Board of Police Commissioners of the Metropolitan Police Department of the City of St. Louis, 920 F.2d 1402 (8th Cir. 1991) is particularly relevant for two reasons. First, it stands for the proposition that the courts must give due deference to municipal agencies and, second, the relational relationship applies to regulations affecting certain municipal employees. In *Crain* a former police officer and a current police officer brought an action for injunctive and declaratory relief under 42 U.S.C. § 1983 against the City of St. Louis and its municipal agencies.

The police officers alleged in their complaint that the sick leave regulation violated their constitutional rights under the First and Fourteenth Amendments. Specifically, they alleged it violated their right to their free exercise of religion, to vote, to travel, and to freely associate.

The standard of review applied in *Crain* to analyze municipal regulations in the police department was the rational relationship test. The *Crain* Court concluded ". . . that the Police Department's sick leave regulations must be reviewed deferentially and that appellants [the police officers] must show that the regulations bear no rational relationship to a legitimate state interest." *Id.* at 1406. *Crain* is particularly relevant, because the Special Order involved in this case forbid police officers from leaving their residences for non-medical reasons. The sick leave regulation allowed officers to leave the residence for medical reasons, but not for religious reasons.

The *Crain* Court neglected to use the heighten scrutiny test and did not require the City of St. Louis to present a compelling reason why it allowed a secular exception and not a religious reason as the Third Circuit did in the case subjudice. The *Crain* Court correctly placed the burden on the police officers to show the sick leave regulation was not rationally related to its stated interests of ". . . safety and morale by expediting the recovery of sick officers, minimizing the burden on officers who may have to work longer hours while other officers are out sick, and assuring that officers on sick leave are not malingering and that the sick leave policy is not abused." *Id.* at 1409. As a result, the Court deferred to the judgment of the St. Louis Police Department while relying upon numerous cases. *See generally Hambsch v. Department of Treasury*, 796 F.2d

430, 434 (Fed. Cir. 1986) (regulations which prohibit secret service agents on sick leave from leaving the Washington D.C. metropolitan area are rationally related to "[the] [s]ervice's interest in fostering public safety by contributing to the efficient operations of the Service" and are not an unconstitutional violation of agents' right to travel); *Korenyi v. Department of Sanitation*, 699 F. Supp. 388 (E.D.N.Y. 1988) (analyzing each constitutional right separately, court found that sick leave regulations did not unconstitutionally infringe on sanitation workers' rights to travel, consult with counsel, associate freely, vote and freely exercise their religion); *Voorhees v. Shull*, 686 F. Supp. 389, 394-395 (E.D.N.Y. 1987) (standard of review "depends not on the nature of the right involved, but on the character of the challenger," rational relationship standard is appropriate when challenger is municipal employee and restrictive sick leave regulations are rationally related to police department's interest in public safety and efficiency); *Serge v. City of Scranton*, 610 F. Supp. 1086 (M.D. Pa. 1985) (rational relationship standard is proper standard for reviewing sick leave regulations when plaintiff is not average citizen but employee of the police force; case remanded for more detailed pleadings); *Philadelphia Lodge No. 5, Fraternal Order of Police v. City of Philadelphia*, 599 F. Supp. 254 (E.D. Pa. 1984) (rational relationship standard used to judge regulations promulgated by city as employer; sick leave regulations that restrict police officers' and firefighters' rights to vote, travel, privacy, and free exercise of religion are rationally related to city's interest in providing sufficient staffing, reducing costs, and improving morale), *aff'd sub nom., Local 22, Int'l Ass'n of Firefighters v. City of Philadelphia*, 779 F.2d 43 (3rd Cir. 1985); *Loughran v. Codd*, 432 F. Supp. 259 (E.D.N.Y. 1976) (because plaintiff is employee of New York City Police

Department and not ordinary citizen, proper standard of review is rational relationship test and sick leave regulations are unquestionably rationally related to city's interest in efficiently managing the department and preventing abuses.)

Crain follows the reasoning in *Kelly v. Johnson*, *supra*, when it applied a different standard of review involving the constitutional rights of a police officer as opposed to an ordinary citizen. *Id.* at 1407; *See Kelly* 425 U.S. at 244-245. Again, the City of Newark contends there is ample case law for its proposition that court should give due deference to the Police Director and the correct standard of review is the rational relationship test.

As a result of the foregoing, the Third Circuit decision in this matter is inconsistent with decisions of the Supreme Court, other Third Circuit decisions and various other circuit courts, and a writ of certiorari should issue.

II.

THE MARCH 3, 1999 JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT CONFLICTS WITH THE DECISION OF THE NEW JERSEY SUPREME JUDGMENT IN *AKRIDGE v. BARRES*, 122 N.J. SUPER. 476, 300 A.2d 866 (APP. DIV. 1973), *AFFIRMED*, 65 N.J. 266, 321 A.2d 230 (1974).

On February 23, 1973, the New Jersey Appellate Division concluded Order 71-15 did not violate the First Amendment of the United States Constitution. "It is no longer open to question that members of a police department 'in many respects constitute a military organization,'

16 McQuillin, Municipal Corporations (3d ed., 1972 rev'd vol.), § 45.16 at 621, and as such are necessarily subject to reasonable regulations having to do with discipline and morale." *Id.* at 477. *See Ward v. Keenan*, 3 N.J. 298, 70 A.2d 77 (1949); *Rivell v. Civil Service Commission*, 115 N.J. Super. 64, 278 A.2d 218 (App. Div. 1971); *Newark v. Massey*, 93 N.J. Super. 317, 225 A.2d 723 (App. Div. 1967); N.J.S.A. 40A:14-118. The Appellate Division found and the New Jersey Supreme Court affirmed the premise that a police department has a ". . . legitimate interest in the appearance of its members, including the length and style of head and facial hair and such regulation would not violate the First Amendment." *Akridge* at 477-478. As a result, the United States Court of Appeals for the Third Circuit judgment is in conflict with the New Jersey Supreme decision in *Akridge*.

The City of Newark Police Department is a quasi-military entity which is authorized by law to use deadly force, when necessary, on a daily basis. The City of Newark has a compelling interest in the management of its police department. This interest is no less important because it is a police department and not a military unit. However, in light of *Crain*, *supra*, a police department is a paramilitary agency and "[t]he legitimacy of the Police Board's interest is obvious. '[A] police department has a substantial interest in developing 'discipline, esprit de corps, and uniformity within its ranks so as to insure the safety of persons and property." *Id.* at 1409, quoting *Hughes v. Whitmer*, 714 F.2d 1407, 1419 (8th Cir. 1983) (quoting *Kelly*, 425 at 246). If case law and our experience indicate enforcement of our grooming policy helps establish discipline within the ranks, team spirit and solidarity, the United States Court of Appeals for the Third Circuit decision is incorrect and at odds with

the Supreme Court, Eighth Circuit and the Supreme Court of the State of New Jersey.

III.

THE THIRD CIRCUIT DECISION CREATES A SUPERIOR RELIGIOUS RIGHT, WHICH DISCRIMINATES AGAINST THE MAJORITY OF THE OFFICERS IN THE NEWARK POLICE DEPARTMENT, AND IS ARBITRARY AND CAPRICIOUS.

The rationale of the United States Court of Appeals in its March 3, 1999 opinion states the City of Newark discriminates against the Sunni Muslims, because it does not have a compelling interest for denying a religious exception, although it provides a secular exception for undercover officers and medical conditions. There is no evidence in the record for the court arrive at this conclusion. More importantly, Aziz and Mustafa in their supplemental appendix presented evidence that the City of Newark assigned those officers with a medical condition to administrative positions, with little or no contact with the public. Therefore, when the City of Newark temporarily assigned police officers with a medical condition to communications and the cell block, and did not allow them to work parade details, it was not undermining its compelling interest in managing its police department, contrary to the Third Circuit opinion.

Moreover, the Memorandum from the Chief of Police, Memo No. 97-30 provides in relevant part the following:

> 2) Personnel who have received medical clearance shall be documented and updated to ensure that medical clearance is current.

> 3) A "*ZERO-TOLERANCE*" policy will be adhered to for those in non-compliance.

The problem with the United States Court of Appeals decision is it incorrectly assumes that a police officer with a medical clearance, has a permanent waiver from Order 71-15. This is simply not true in practice or given a fair reading of the above-mentioned passage. In addition, the Third Circuit assumes that a police officer with a medical clearance performs the same functions as officers who are not on a medical clearance. Again, the complaints to the Department of Law and Public Safety clearly establish this is not true. The officers in this complaint claim the City of Newark is discriminating against them on the basis of their race, because they have this temporary condition and it is affecting the assignments they are given. Therefore, by creating this permanent religious exception, the Third Circuit is creating a superior right, which is different and contrary to the goals of the Newark Police Department. Again, this analysis is in direct conflict with *Crain* since there was an exception to the sick leave policy for medical reasons, just as in this case. Therefore, if the City of St. Louis was not required to show a compelling interest in not allowing a religious reason to violate the sick leave policy, the City of Newark should not arbitrarily be forced to traverse this hurdle.

It follows from the Third Circuit decision at page 18a that if the medical exception undermines the City of Newark's interest, then the religious exception, which the Third Circuit has created, definitely undermines the City of Newark's interest in this matter. There is nothing in the record, as the Third Circuit concludes, that the department has made a value judgment in favor of secular motivations.

This is further supported, again, because of the lawsuits by those individuals that currently are allowed temporary medical waivers, but are denied those assignments where they would have significant contact with the public. As a result, the City of Newark is now forced to create a permanent class of police officers, who can not adequately perform the functions they were hired to perform. This situation occurs because the Third Circuit has refused to defer to the judgment of the Newark Police Director and acknowledge the numerous cases that support the city's argument that the rational relationship test is the appropriate test.

Since the decision of the Third Circuit is at odds with facts presented and the court moved from its judicial function into the world of the executive branch, it has legislated a new unacceptable religious right in the Newark Police Department and it has acted arbitrarily. As a result of this legislation by the Third Circuit, it has acted contrary to the United States Supreme Court in the *Kelly* case and the Eighth Circuit in *Crain*.

IV.

THE THIRD CIRCUIT DECISION DATED MARCH 3, 1999, REQUIRES THE CITY OF NEWARK TO CONSIDER RELIGIOUS BELIEFS AND PRACTICES WHILE ATTEMPTING TO ADMINISTER MANDATORY AND UNIFORM RULES AND REGULATIONS, WHICH DO NOT TAKE RELIGION INTO CONSIDERATION.

The March 3, 1999 decision by the United States Court of Appeals has an impact upon every police department in

the United States of America. The Third Circuit decision has an impact on every rule and regulation in police departments and any orders given in the field. In an organization, where the reasonable and lawful orders of a superior officer are expected to carried out without objection and debate, the Third Circuit has issued a decision that requires every superior officer to become an expert in various religions and seriously negates the ability of the police department to provide police protection. By creating this superior religious right, the Third Circuit has created a split in Newark Police Department, because now officers don't know how religious officers are going to respond in any given situation. The City of Newark has police officers, and religious police officers. The religious police officer's knew the City of Newark's policy when they joined the police department. Respondent, Aziz was employed by the Newark Police Department in 1989 and Respondent, Mustafa has been on the department since at least 1986.

Since the United States Supreme Court has determined that a police department or military grooming policy does not offend the United States Constitution, the City of Newark requests a writ of certiorari to provide guidance to the City of Newark and every police department in the United States of America. *See Kelly v. Johnson*; *Goldman v. Weinberger*; *Procunier v. Martinez* and *Bell v. Wolfish*.

CONCLUSION

For the reasons expressed in this Petition, the City of Newark respectfully requests this Court issue a writ of certiorari to review the United States Court of Appeals for the Third Circuit's decision; reverse that court's determination and vacate the award of costs and lawyer's fees in this matter.

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